



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/089

Judgment No.: UNDT/2013/003

Date: 14 January 2013

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

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Introduction

1. The Applicant contests his non-selection for the P-3 level post (“the Post”) of

7.

- b. Did the failure to consider the Applicant's performance appraisal report affect the fair consideration of his application?

Applicant's submissions

13. The Applicant's principal contentions may be summarised as follows:
 - a. The Applicant possessed the necessary qualifications for the Post and, as a 15-day candidate, he should have been considered for the vacancy prior to any 30-day candidate being even considered;
 - b. Although eligible, the Applicant's name was not included in OHRM's list of the 15-day candidates resulting in a breach of the applicable post selection rules and procedures, including ST/AI/2006/3 (Staff selection system). Furthermore, his performance evaluation ("e-PAS") reports were not made available to the officer conducting the evaluation of the candidates;
 - c. The members of the interview panel did not possess relevant expertise and qualifications in the field of the Post for the purpose of conducting the interview;
 - d. The breach of the applicable procedures resulted in the Applicant not receiving a full and fair consideration for the Post and affected his rights to assume new responsibilities as well as his capacity to develop his career;
 - e. As a result of the breach of his rights, the Applicant seeks one-year net base salary in damages.

and fair consideration as the panel's final determination on suitability was solely based on the interview itself;

e. There is no basis to compensate the Applicant since he has failed to establish that he has suffered any injury or damages warranting compensation. In *James* 2010-UNAT-009, the Appeals Tribunal held that an award of damages is not appropriate when there is no evidence of damage or injury.

Consideration

Applicable law

15. The relevant legal provisions as contained in ST/AI/2006/3 (Staff selection system), applicable at the time, are as follows:

Section 6

Applications

...

6.2 Applications of candidates eligible to be considered at the 15-day mark but received before the 30-day mark shall nevertheless be transmitted for consideration to the department/office, provided that the head of department/office has not submitted to the central review body a proposal for one or more candidates eligible to be considered at the 15-day mark. Applications for a vacancy posted with a 60-day deadline from candidates eligible to be considered at the 30-day mark but received afterwards shall be transmitted with all the other applications received before the deadline.

...

6.6 At the time of application, staff members shall submit a copy of their last two performance appraisals. If there is a gap of six months or longer in the record of performance, or if no appraisal was completed within six months of the end of the preceding performance year, the staff member shall be deemed to have fully met performance expectations during the period for which there is no performance record or appraisal.

Section 7

Consideration and selection

7.1 In considering candidates, progr

What is the nature of the “first priority” to be accorded to these moves? This is made clear in the following sentence. It is only if “no suitable candidate can be identified at this stage”, namely the stage of considering the 15-day mark candidates, that the 30-day mark candidates are to be considered. The section clearly and unambiguously requires two stages in which the candidates are considered, the second stage of which will only arise if the specified prerequisite occurs – the nonidentification of a suitable candidate at the first stage. ... [15-day mark candidates] must be considered first,

23. The Applicant's rights to be evaluated and considered as a 15-day candidate for the Post, prior to any 30-day candidates being considered, were violated.

Interview panel

24. It is the Applicant's submission that he was not afforded full and fair consideration by the interview panel due to the fact that they did not receive and review his most recent e-PAS which he submitted under separate cover, though on

Conclusion

36. The application is granted in part with regard to the breach of ST/AI/2006/3. As a 15-day candidate, he should have been considered for the post prior to any 30-day candidate being considered.

37. The request for damages is dismissed

(Signed)

Judge Alessandra Greceanu

Dated this 14th day of January 2013

Entered in the Register on this 14th day of January 2013

(Signed)

Hafida Lahiouel, Registrar, New York